IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/07/2002

CORAM

THE HONOURABLE MR. JUSTICE V.KANAGARAJ

W.P.No.25584 of 2002

1. S.Thenmozhi
2. N.Kanagasabapathy
3. T.N.Gunasekaran
4. Parukuttikrishnan .. Petitioners

Vs.

1. Competent Authority,
Smugglers and Foreign
Exchange Manipulators
Forfeiture of Property
Act 1976,
G.N.Chetty Road,
T.Nagar, Chennai-17.

2. Appellate Tribunal for
Forfeited property,
IV Floor,
Loknayak Bhawan,
Khan Market,
New Delhi-3. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus as stated therein.

For Petitioners : Mr.B.Kumar, Senior Counsel for
Mr.S.Sivakumar

:O R D E R

Writ Petition praying to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent dated 16.5.2002 passed pursuant to the order of the first respondent dated 21.12.2001 and quash the same and further direct the first respondent not to proceed against the immovable properties of the petitioners extending 4 grounds 800 sq.ft. in S.No.148, Virugambakkam, Madras, as they were not subject matter of the proceedings under the Act.

2. On a perusal of the records and upon hearing the learned counsel for the petitioners, this Court is convinced to the effect that the appellate Board has unreasonably and without sufficient cause or reason and appreciating the position of law in a narrow sense, has rather committed an error of law in rejecting the appeal preferred by the petitioners under Section 12(4) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as 'the Act').

3. It may be noted that the Division Bench of this Court, while assessing the facts and circumstances encircling the case filed therein, had ultimately arrived at the conclusion that the said aspect involved therein as discussed in para. 3 of the said order made in W.A. No.2375 of 2001 dated 08.11.2001, 'may have to be gone into only by the competent authority under Section 6(1) of the Act.'

4. Learned Senior Counsel appearing on behalf of the petitioners would apprise this Court to the effect that on an application filed before the competent authority under Section 6(1) of the Act, the competent authority has passed its order under Section 7 of the Act and it is the law embodied under Section 12 of the Act that the appellate tribunal should entertain the appeal arising out of the order made by the competent authority under Section 7, Sub-Sec.(1), Sections 9(1) or 10, and therefore, the appellate authority has no right to reject an appeal of that sort preferred by the petitioners herein, as per the order passed by the Appellate Tribunal for Forfeited Property, New Delhi (Camp: Bangalore), dated 16.5.2002.

5. Learned Senior Counsel is perfectly right in clarifying the position of law regarding the appeal preferred by the petitioners herein and it is only the appellate authority, who, under miserable misconception of the position of law embodied in the Act, has wrongly rejected the appeal without entertaining the same for passing an order in full consideration of the grounds raised therein. Therefore, this Court, in the above circumstances, is of the firm view to direct the appellate authority to entertain the appeal preferred by the appellants and pass orders.

In result,
(i) the petitioners are directed to prefer an appeal in the regular format prescribed before the appellate authority, within three weeks from the date of receipt of a copy of this order;

(ii)the appellate authority shall entertain the said appeal and consider the same on merits and in accordance with law and pass orders with an opportunity for the appellants to be heard, within the parameters of law.

In view of the above directions, the above writ petition has become unnecessary and the same is dismissed as such. No costs.

Till such time that the appeal is disposed of, let not the status quo that prevails today be disturbed.

Consequently, WPMP No.35242 of 2002 is also dismissed.

18.07.2002

To

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V.KANAGARAJ, J.

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